

STATE OF MICHIGAN



84TH DISTRICT COURT

MARY G. SORGER
COURT REPORTER

WEXFORD COUNTY

DAVID A. HOGG
DISTRICT JUDGE

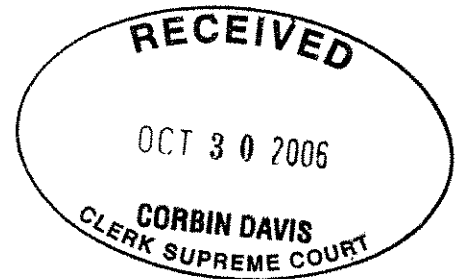
BRENDA L. LEWIS
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LORRAINE B. GREGG
ATTORNEY MAGISTRATE

October 26, 2006

Corbin R. Davis
Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909



Re: ADM File 2005-19 Jury Reform Proposals

Dear Mr. Davis:

You have received and posted many comments on the proposed amendments to the Michigan Court Rules affecting jury trials. I question the wisdom of some of these changes, but my basic criticisms have been adequately expressed by others. I wish to draw the Court's attention to the ambiguity that is created by the consolidation of civil and criminal jury trial rules, as they may affect district court practice, and to advocate that these changes not apply to misdemeanor trials.

The current rule governing the conduct of a criminal jury trial is MCR 6.414. Its application, however, is limited to felony cases by MCR 6.001. The proposed consolidation of civil and criminal rules results in the deletion of MCR 6.414 and the renumbering of consolidated rules, MCR 2.512 through MCR 2.516. This renumbering is not accommodated by a corresponding change to MCR 6.001. It is unclear whether the proposed changes are intended for misdemeanor trials, unintended for misdemeanor trials, or whether the present distinction between misdemeanor and felony cases has simply been overlooked. I urge the Court to restrict these changes, if made, to felony cases. I believe that changes in procedure required by the proposed amendments will unduly complicate and lengthen minor criminal matters, without a commensurate benefit.

Before expressing my specific concerns, it may be helpful to emphasize the simplistic nature of the typical criminal jury trial held in district court. It is a short affair, usually completed in less than one day. The analysis is almost always fact-driven, without theoretical complexity. The truthfulness of witnesses and the accuracy of their testimony are often the only disputed issues. Other court business cannot be neglected during this time and the judge is challenged to use the jurors' time effectively, while also attending to other

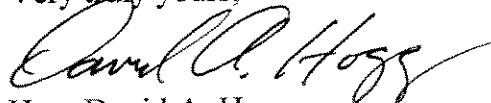
matters. These trials are conducted by overworked assistant prosecutors and underpaid appointed lawyers, who are disinclined to prepare anything in writing unless it poses a significant possibility of affecting the outcome of the trial. Mandating the preparation of time-consuming written documents by counsel and by the court during every trial is generally unnecessary and wasteful.

MCR 2.513(A) would require the court to prepare written preliminary legal instructions, including the elements of the offenses charged, and to provide them to each juror, after the jury is sworn and before the evidence is taken. **MCR 2.512(A)(2)** would require both the prosecutor and the defense attorney to submit a written statement of the issues of the case after the close of the evidence, and **MCR 2.512(B)(2)** would require the court to give these statements as jury instructions, unless these issues are presented to the jury in another form. **MCR 2.513(N)(3)** would require the court to provide each juror with a written copy of the final jury instructions.

Three times during the course of the trial, the proposed rules would require the judge to recess the jury, consult with lawyers outside the jurors' presence, require or invite partisan documents to be filed, resolve adversarial bickering and prepare a written document to be given to the jury. In short, uncomplicated misdemeanor jury trials, the amount of time consumed by this process would frequently exceed that needed to present the evidence. Although Michigan Court Rules do not now specifically authorize the submission of written instructions to a jury trying a misdemeanor case, I have done so when it appeared that the complexity of the issues merited it. While this discretion should be retained, the requirement to repeatedly prepare written documents during every misdemeanor trial is overly burdensome.

If the proposed amendments are adopted, some change to MCR 6.001 will be required to incorporate the consolidated jury trial rules to criminal procedure. I respectfully request that the Court purposefully consider whether all of these changes should apply to misdemeanor trials and urge that they should not.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David A. Hogg".

Hon. David A. Hogg
84th District Judge